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ABSTRACT

Wages and working conditions for private household workers have not kept pace with other occupations, partly because of lack of coverage by labor laws. This pamphlet describes the protection available to domestics under both federal and state laws. Not only wages and hours, but also coverage by Unemployment Compensation, Workmen's Compensation, and Social Security are discussed. This paper is a revision of MP 000 543. (BH)

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LABOR LAWS AFFECTING PRIVATE HOUSEHOLD WORKERS

Private household work is one of the major fields of employment for women, who accounted for nearly all of the approximately 1.8 million household workers 16 years of age and older employed in November 1968. However, private household work is also one of the least attractive fields of employment, since the wages and working conditions often are substandard.

The 1966 median (half above, half below) wages of even those private household workers who worked full time for 50 to 52 weeks a year were less than $1,300. Since many workers in the occupation are employed only part time or part year, their earnings are clearly marginal. Moreover, surveys show that in this field of employment the fringe benefits and working conditions, including hours of work, have not kept pace with those in other fields.

One reason for substandard employment conditions in private household work is the exemption of the occupation from most laws providing labor standards protection. Legislation to improve existing working conditions and bring new status to the occupation would benefit workers now engaged in household employment and would attract new workers to meet the continuing demand for assistance in the home.

A number of public and private agencies, together with the National Committee on Household Employment, have expressed an interest in developing standards for this occupation. The following, which was prepared for those agencies and organizations, includes information on protection currently available to private household workers and an indication of areas where programs should be instituted or expanded.

Wages

The Fair Labor Standards Act (FLSA), the Federal wage and hour law of most general application, applies to employees engaged in interstate or foreign commerce or in the production of goods for commerce, as well as certain large enterprises. As presently interpreted, this does not include private household workers who, as a result, are outside the protection of the standards in the act, including the requirement that most covered employees be paid at least $1.60 an hour and not less than 1½ times their regular rates for hours worked in excess of 40 a week.

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In 27 States, the District of Columbia, and Puerto Rico, a minimum wage rate is set by law. Premium pay for overtime is required by law in 11 of these jurisdictions. However, it appears that the provisions in only three of these laws--those of Arkansas, Michigan, and West Virginia--are sufficiently broad to cover private household workers, and these laws contain numerical exemptions which almost eliminate household workers as a practical matter.

The Michigan minimum wage requirement of $1.25 an hour applies to employers of four or more workers at any one time during a calendar year. The West Virginia minimum wage requirement of $1.00 an hour, plus 1½ times employees' regular rates for hours worked in excess of 48 a week, applies to employers of six or more workers in any week.

In addition, the recently revised Arkansas law, which on January 1, 1969, requires the payment of at least $1.00 an hour, does not exclude private household workers from coverage. However, the law applies only to employers of five or more employees in a regular employment relationship.

Twelve States have wage board programs under which regulations setting a minimum wage in an industry or occupation, or for a designated group of workers, can be issued pursuant to prescribed administrative procedures. It appears that under existing authority six of these States--California, Colorado, New Jersey, North Dakota, Utah, and Wisconsin--could issue orders covering private household workers, and that in most of these States the orders could include premium pay for overtime work. However, only Wisconsin actually has issued a minimum wage order covering household workers. In California a wage board has recommended the issuance of a wage order covering women and minors who are domestic employees.

A revision of the Wisconsin order, effective July 1, 1968, requires a minimum weekly wage of $58.50 for adult women and minors 18 years of age and over who are employed in domestic service in private homes for 45 hours or more a week if board and lodging are not furnished; $42.90 if board only is furnished; and $32.40 if board and lodging are furnished. For minors 17 years of age and under, the wage is $49.50 if board and lodging are not furnished; $33.90 if board only is furnished; and $23.40 if board and lodging are furnished. If employees are paid on an hourly basis, the rate will be $1.30 an hour for adult women and minors 18 years of age and over and $1.10 an hour for minors 17 years of age and under.

The revised order further provides for periodic revision of the minimum wage rates based on changes in the Consumer Price Index.

However, the Wisconsin order excludes from minimum wage coverage casual employment in or around a home in work usual to the home of the employer. "Casual" employment is defined as employment for not more than 15 hours per week for any one employer.

Hours of Work

There are no Federal laws of general application regulating hours of work, with the exception of the premium pay requirements in the FLSA, previously discussed. Laws or orders in 41 States and the District of Columbia specify that covered workers must not be employed more than a set number of hours a day and/or a set number of hours a week. However, only three of these States--Kansas, Montana, and Washington--have laws which either could or do provide protection from excessive hours of work for private household workers.

Under the Kansas law, power exists to issue orders limiting the number of hours women household workers may be employed, but no such orders have been issued. The constitution of Montana appears to set an 8-hour limit on the workday of all workers in all employments except farming and stockraising, thus covering workers in private homes. The State of Washington has provided by statute that private household workers, both male and female, shall not be employed more than 60 hours a week, except in emergency.

In addition, Industrial Welfare Order No. 33, issued by the State of Washington, recommends that in any week female household workers not be employed for more than 10 hours a day for 5 days, 4 hours a day for 1 day, and 6 hours on the remaining day. The order defines free hours as those hours when the employee is entirely free from any responsibility to the employer or the job; defines an emergency as an unforeseen condition calling for immediate action that is neither continuous nor regular; and states that overtime may be compensated for by extra time off during the same week to keep working time within the statutory 60-hour maximum.

Wage Payment and Collection

There are no Federal laws of general application regarding wage payment and collection. However, many States have comprehensive laws on this subject, and all States have laws relating to one or more of the following:

(1) payment of wages in lawful money or medium redeemable in lawful money,

(2) establishment of a regular payday, and

(3) prompt payment when a worker is discharged or resigns.

(1) Medium of payment.--These laws generally specify that employees must be paid for their labor in cash or check redeemable in cash. The medium of payment laws are sufficiently broad to cover private household workers in 33 jurisdictions--Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida,

Wage Payment and Collection--Continued

Georgia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Massachusetts, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

(2) Frequency of payments.--These laws generally provide that the employer must pay his workers within the time specified in the law--for example, 1 week, 2 weeks, or 1 month--although usually he may pay more frequently if he chooses. The provisions for frequency of payment appear sufficiently broad to cover private household workers in 25 jurisdictions--Alaska, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Idaho, Indiana, Massachusetts, Montana, Nevada, New Jersey, New York, North Dakota, Ohio (if five or more employees), Oklahoma, Oregon, Pennsylvania, Puerto Rico, Tennessee (if five or more employees), Texas, Virginia, and West Virginia.

In addition to their regular frequency of payment laws, two States--California and Massachusetts--have special provisions relating to private household workers. The California law provides that employees who receive both board and lodging from the employer must be paid at least once each calendar month on a day designated in advance as a regular payday. A Massachusetts law provides that private household workers may be paid monthly.

(3) Termination payments.--These laws provide that an employer must pay a worker at, or within a specified period of time after, termination of employment. The laws requiring termination payments immediately or within a specified time are of sufficiently general coverage to include private household workers in 28 jurisdictions--Alaska, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maine, Massachusetts, Minnesota, Montana, Nevada, New Jersey, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Texas, Virginia, West Virginia, and Wyoming.

Unemployment Compensation

Under the unemployment insurance program, covered wage earners who lose their jobs are paid specified amounts for varying periods of time. The program is operated jointly by the Federal and State Governments, with the States establishing standards for the payment of benefits. Employers covered by the program are required to pay a payroll tax, and the tax revenues are put into a fund from which the unemployment benefits are paid. In most jurisdictions, employers who are not required by law to participate in the program may do so voluntarily.

Only two States--Hawaii and New York--have unemployment insurance laws with mandatory coverage of private household workers. Coverage in these States is limited, however, since the Hawaii law covers only those

Unemployment Compensation--Continued

employers who pay $225 or more for household service in a calendar quarter, and the New York law covers only those who pay $500 or more to household employees in a calendar quarter.

Voluntary coverage of private household workers is permitted in all jurisdictions (including Hawaii and New York, regardless of the monetary test), except Alabama and Massachusetts.

Workmen's Compensation

Workmen's compensation programs are established by State law (with some limited exceptions related to Federal employment or property). When covered employees suffer work-related injury or death, benefits are provided for the employees and/or their families. Private household workers generally are excluded from workmen's compensation coverage, although some steps have been taken toward coverage in eight States and Puerto Rico.

The Alaska law covers private household workers except for those employed part time. California covers those who work more than 52 hours a week for one employer. Connecticut covers those who work more than 26 hours a week for one employer. In Massachusetts all seasonal, casual, and part-time (less than 16 hours a week) workers are included in elective coverage, while all others come under compulsory coverage.

The Michigan law covers private household workers employed at least 35 hours a week for at least 13 weeks during the preceding 52 weeks. The New Jersey law covers all private household workers but does not require the employer to insure. The New York law applies to private household workers employed by the same employer at least 48 hours a week in cities of 40,000 or more; however, the law sets no penalty for failure to secure compensation. In Ohio workers are covered when the employer has three or more employees. Puerto Rico covers all workers regularly employed in private household service.

In those jurisdictions which do not cover private household workers, voluntary coverage is permitted in all except Alabama, the District of Columbia, Iowa, West Virginia, and Wyoming.

Social Security

The Federal Social Security Act, which establishes the old-age survivors, disability, and health insurance program, provides compulsory coverage of private household workers who receive the same benefits as other workers covered by the program. For the purpose of determining the insured status of private household workers, a quarter of coverage is credited to a worker who receives at least $50 in cash wages from one

employer in a calendar quarter. If the worker meets this test, wages received from all employers are credited for purposes of computing benefits.

It should be noted, however, that some employers of private household workers fail to comply with the reporting requirements of the act. This practice has serious adverse effects on the protection available to those workers.